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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/871,828	06/01/2001	Rob Klein	501095	2824

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EXAMINER

KUHNS, ALLAN R

ART UNIT	PAPER NUMBER
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1732

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DATE MAILED: 02/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/87,828Applicant(s)
KLEINExaminer
KUHNGroup Art Unit
1732

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE(3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1 - 40 is/are pending in the application.
- Of the above claim(s) 24 - 40 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1 - 23 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claim(s) 1 - 40 are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
 - ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-23, drawn to a method of manufacturing a plurality of starch molded products, classified in class 264, subclass 219.
 - II. Claims 24-40, drawn to a mogul machine for manufacturing a plurality of starch products, classified in class 425, subclass 175.
2. The inventions are distinct, each from the other because:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus structure as claimed can be used to practice another and materially different process such as one in which a liquefied material containing no starch is shaped.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art requiring divergent fields of search for the respective inventions, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Andrew Heinisch on February 12, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-23. Affirmation of this election must be made by applicant in replying to this Office action. Claims 24-40 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. Claims 1-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In both claims 1 and 12, a "liquefied molded mixture" being introduced into cavities is specified; this is confusing because it appears that the mixture does not actually become molded until it sets within the cavities. In addition, it appears that "starched" on line 7 of claim 1 should be "starch", "an" on line 8 of claim 12 should be "a", "allow" on line 4 of claim 17 should be "allowing", and "comprising" on line 1 of claim 23 should be "comprises". Also, "the selectively adjusting step" in claim 3 lacks antecedent basis within the claims. Furthermore, claim 11 would "read" better if "a plurality of cavities" followed "forming". Clarification is required.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Withers in view of the admitted prior art as set forth in the specification at page 1 (Background Of The Invention). Withers discloses the basic claimed method of manufacturing a plurality of molded products including (1) filling a tray with starch, the tray having a horizontally extending base and a vertically extending peripheral border wall containing starch in the tray, the border wall having a top edge, (2) leveling or packing flat the starch in the tray (column 1, line 11), (3)

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forming a plurality of cavities or impressions in the starch contained in the tray, (4) filling a liquefied molding mixture into the cavities, and (5) curing or allowing the mixture to set and removing the molded products from the starch. Withers appears not to teach the aspect of using liquefied starch as the molding material, but such is taught by the admitted prior art. It would have been obvious to one of ordinary skill in the art to incorporate this aspect taught by the admitted prior art into the method of Withers in order to provide a shape to starch-containing candy. Leveling a mold forming material at a point below a top edge of a containment tray is well known and would have been obvious to one of ordinary skill in the art in order to prevent spillage of mold forming material.

Concerning claims 2-3 and 11, one of ordinary skill in the art is aware that forming depressions in a bed of starch would cause areas of the bed where depressions have not been formed to rise, and it would have been obvious to one of ordinary skill in the art to adjust the initial level of starch to compensate for displaced starch in order to prevent overflow or spillage from the tray.

8. Claim 4 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

9. Claims 12-23 are allowable over the prior art of record.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Allan Kuhns whose telephone number is (703) 308-3462. The examiner can normally be reached on Monday to Thursday from 7:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino, can be reached on (703) 308-3853. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Allan R. Kuhns
ALLAN R. KUHNS
PRIMARY EXAMINER AU 1732
2-13-03